

Internal Revenue Service
memorandum

date: SEP 25 1991

to: Joe Calderero
District Technical Coordinator
San Francisco District

from: William E. Coppersmith
Chief, Branch 2 *William E. Coppersmith*
Assistant Chief Counsel (Financial Institutions & Products)

subject: Request for Technical Assistance
Re: Form 1099 and Child Support

This is in reply to your request, dated April 11, 1991, for technical assistance under the provisions of Internal Revenue Manual section 4552, whether Form 1099 is required under the circumstances described below.

We understand that the Family Support Division of a District Attorney's Office within your jurisdiction assesses an additional charge on delinquent child support payments made by absent parents. In monthly statements issued to an absent parent, the Family Support Division denotes any additional charge as interest. The Family Support Division sends an annual statement to the custodial parent showing only the total amount collected from the absent parent during the preceding year and does not show any of the additional charges that would have been designated as interest in the monthly statements sent to the absent parent.

You have submitted the following questions for our consideration:

(1) If total annual payments to a custodial parent are less than the amount of the annual support obligation, is a portion of the annual payments interest?

(2) If total annual payments to a custodial parent are more than the amount of the annual support obligation, how much of the excess is interest and how much is past-due principal?

We understand that these questions are submitted for the purpose of deciding whether Form 1099-INT must be filed with respect to the additional charge designated as interest in the statements to the absent parent, and if so, by whom.

Under section 6049(a)(1) of the Internal Revenue Code and section 1.6049-4(a) of the Income Tax Regulations, every person who makes payments of interest aggregating \$10 or

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more to any other person during a calendar year and every person who collects payments of interest on behalf of another person aggregating \$10 or more during a calendar year must make an information return.

Under section 6049(b)(1) of the Code and section 1.6049-5(a) of the regulations, except as provided in section 6049(b)(2) of the Code and section 1.6049-5(b) of the regulations, the term "interest" generally means the following:

(1) Interest on an obligation (emphasis supplied) in registered form (as defined in section 5f.103-1(c)) or of a type offered to the public.

(2) Interest on deposits with persons carrying on the banking business, amounts designated as "dividends" paid by certain mutual savings or financial institutions, interest on amounts held by insurance companies under an agreement to pay interest thereon, interest on deposits with brokers as defined in section 6045(c), and interest paid on amounts held by investment companies.

Based on the information submitted, it does not appear that the child support payments constitute obligations described in section 6049(b)(1) of the Code. Child support payments administered by the Family Support Division appear to be qualitatively different from corporate bonds insofar as there is no voluntary contractual relationship involved in the duty to pay support or additional charges on delinquent amounts. In this context, it is difficult to conclude that there has been any issuance of an obligation.

If child support payments are assumed to be obligations, a further question is whether they are issued in registered form (there is no question that they are not obligations of a type generally offered to the public). Under section 5f.103-1(c)(1) of the regulations, an obligation issued after January 20, 1987 under a contract entered into after that date is in registered form if it is (1) registered as to both principal and any stated interest with the issuer or its agent and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; (2) the right to the principal of and stated interest on the obligation may be transferred only through a book entry system maintained by the issuer or its agent; or (3) the obligation is registered as to both principal and any stated interest with the issuer or its agent and may be transferred through both of the preceding two methods. The references to stated interest, principal,

and transferability clearly preclude a finding that child support payments, even if they are obligations, are in registered form. Consequently, they would not be obligations that would bear interest subject to section 6049 reporting.

If child support payments are obligations in registered form other issues are presented.

Section 6049(b)(2) of the Code and section 1.6049-5(b) of the regulations exclude certain interest from the reporting requirements. Under section 6049(b)(2)(A) of the Code and section 1.6049-5(b)(1)(i) of the regulations, excluded interest includes interest on any obligation issued by a natural person, irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman. (Under section 1.6049-4(b)(3), a middleman is generally required to file Form 1099.) Under section 1.6049-4(f)(2), the term "natural person" means any individual. Under section 1.6049-4(f)(4)(i), the term "middleman" includes any person who collects interest on behalf of another person or otherwise acts in a capacity as intermediary between a payor and a payee. Under section 1.6049-4(f)(1), the term "person" includes any governmental unit and any agency or instrumentality thereof. Thus, if the child support payments are considered an obligation and the absent parent is considered to be the issuer of the obligation, the interest would be excluded from the reporting requirements of section 6049 (even if the Family Support Division is considered a middleman) because the absent parent is a natural person.

A different conclusion follows if two separate obligations are hypothesized, one being issued by the absent parent to the Family Support Division and a second issued by the Family Support Division to the custodial parent. The first would be exempt by virtue of being an obligation issued by a natural person. However, in such case the Family Support Division would not be acting as a middleman, but rather as an obligor or issuer in its own right. In the case of the second obligation, the Family Support Division would be required to file an information return on Form 1099. Although section 1.6049-4(c)(1)(ii)(C) of the regulations would exempt the Family Support Division's receipt of interest from information reporting (in addition, the absent parent's interest is excluded from the definition of interest subject to section 6049), any interest paid by the Family Support Division would be reportable. Such interest would not be excluded from the definition of interest under section 1.6049-5(b). There is no general exemption for payors of interest, and sections 1.6049-5(b)(1)(ii) and (iv) only except interest paid by state or

local governments or their agencies on municipal bonds and tax refunds. Finally, the custodial parent is not an exempt recipient under section 1.6049-4(c). Thus, the interest would be subject to reporting if the Family Support Division were viewed as a separate issuer.

Assuming that the additional charge levied on the absent parent is interest not excluded by section 1.6049-5(b) of the regulations, the Family Support Division would be more properly viewed as a middleman rather than an independent, separate issuer or obligor. Because the Family Support Division appears to be acting solely as a collection agent on behalf of the custodial parent, we do not see how it could be characterized as the issuer of its own obligation.

This response to your request is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case. The substance of this memorandum will not be recommended for publication as a revenue ruling or revenue procedure.

If you have any questions or comments regarding this memorandum, please call Adrian Michur at FTS 566-3294.